

September 22, 2023

Via ECF

U.S. Magistrate Judge Taryn A. Merkl
United States District Court Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Trooper 1 v. Cuomo, et al., No. 22-cv-00893-LDH-TAM

Dear Magistrate Judge Merkl:

On behalf of the non-parties who have appeared in this case, we write as a courtesy to the Court ahead of the September 26 conference, to provide a summary of the numerous non-party subpoenas Defendants have served and the ensuing motion practice they have created.

Status of Discovery Regarding Nonparty State Entity Employee # 2

- State Entity Employee #2 served in the New York State Department of Health and gave sworn testimony (publicly available) on May 24, 2021, in the Attorney General's investigation of then-Governor Cuomo.
- State Entity Employee #2 is a non-party who never filed suit in any case.
- On or about August 22, 2023, counsel for Mr. Cuomo served State Entity Employee #2 with a non-party Subpoena to Testify at a Deposition in the *Trooper 1* civil action pursuant to Fed. R. Civ. P. 45.
- On or about September 12, 2023, counsel for Ms. DeRosa and Mr. Azzopardi also served on State Entity Employee #2 a Non-Party Deposition Subpoena.
- On September 21, 2023, counsel filed (ECF No. 157) a letter with the Court: 1) seeking confidentiality of State Entity Employee #2's identity, and 2) a briefing schedule to quash both subpoenas.

Status of Discovery Regarding Nonparty Kaitlin

- Kaitlin is not a party to this case or any case. She does not know Trooper 1, has never communicated with her, and did not even work for Cuomo at the same time as her. The only connection Kaitlin has to this case is that she, along with many others, were witnesses in the OAG investigation and a few paragraphs of the Amended Complaint summarize the OAG's findings about her. See ECF No. 7 ¶¶ 131-39.
- On April 18, 2023, Defendant Cuomo served two subpoenas addressed to Kaitlin seeking documents (ECF No. 142-2) and a deposition (ECF No. 142-3).
- On August 17, 2023, Defendant Cuomo served a subpoena on Verizon seeking all of Kaitlin's account information and phone records for 3.5 years (ECF No. 161-1).
- On August 21, 2023, after Cuomo threatened to publicly file Kaitlin's full name notwithstanding that we had designated it "confidential" under the Confidentiality Order, Kaitlin made an emergency motion to the Court to maintain her confidentiality. ECF No.

128. The Court promptly ordered the same day (August 21, 2023) that “all parties are respectfully directed that any documents containing Kaitlin Doe’s identifying information **must be filed under seal.**”

- On August 22, 2023, the very next day Cuomo’s co-Defendants DeRosa and Azzopardi filed an unsealed letter on the public docket attaching a photo of Kaitlin, forcing Kaitlin to yet again seek emergency protection from the Court (ECF No. 133), which the Court again promptly granted, re-ordering “that any documents or submissions containing Kaitlin Doe’s identifying information, **including images, must be filed under seal, not merely redacted.**”
- On August 31, 2023, Defendant Cuomo moved to compel Kaitlin’s compliance with the deposition and documents subpoenas her had served on her (ECF Nos. 140-142).
- On September 21, 2023, Kaitlin filed an opposition to Cuomo’s motion and a cross-motion to quash or modify Cuomo’s subpoenas on her and to quash Cuomo’s subpoena on Verizon for her phone records and account information (ECF Nos. 159-161). Per the Court’s September 7 scheduling order, the briefing on Cuomo’s motion and Kaitlin’s cross-motion will be completed on October 5, 2023.
- On September 6, 2023, Kaitlin’s counsel was contacted by counsel for Defendants DeRosa and Azzopardi asking us to accept service of subpoenas from them seeking documents from and a deposition of Kaitlin. ECF No. 161 at ¶ 17.

Status of Discovery Regarding Nonparty Lindsey Boylan

Trooper 1 v. New York State Police, No. 22-cv-00893 (LDH) (TAM) (E.D.N.Y.) (“*Trooper 1*”) *Cuomo v. Boylan*, Case No. 23-mc-01587 (LDH) (TAM) (E.D.N.Y.) (“*Boylan*”)

Nonparty Lindsey Boylan is currently the subject or recipient of no fewer than 13 subpoenas in this case—including two that were recently served on a third party who interned for Ms. Boylan’s campaign as a college undergraduate.

Defendant Andrew Cuomo has served two subpoenas directly on Ms. Boylan: 1) a document subpoena and 2) a subpoena for deposition. Mr. Cuomo filed a motion to compel compliance with the document subpoena (*Boylan* ECF 1, 3), and Ms. Boylan filed a cross-motion to quash (*Boylan* ECF 16).¹ The briefing was completed on August 9, 2023, when Ms. Boylan filed a reply (*Boylan* ECF 25).

Mr. Cuomo also has issued or noticed nine nonparty subpoenas seeking information about Ms. Boylan from the following entities or individuals: 1) the Empire State Development Corporation (“ESD”), where Ms. Boylan previously worked; 2) the Executive Chamber, where Ms. Boylan worked for Mr. Cuomo; 3) Howard Zemsky, Ms. Boylan’s prior supervisor and the Chair and Chief Executive Officer of ESD; 4) Elizabeth Fine, the former General Counsel of ESD; 5) “Lindsey for New York,” Ms. Boylan’s congressional campaign entity; 6) Cade Leebron, the former finance director of Ms. Boylan’s congressional campaign; 7) Verizon, Ms. Boylan’s personal cellphone service provider; 8) Alessandra Biaggi, who previously worked for Mr. Cuomo and from whom he seeks communications with or about Ms. Boylan concerning allegations against Mr. Cuomo; and 9) a young woman who interned for Ms. Boylan’s campaign

¹ Counsel for Ms. Boylan and Mr. Cuomo have agreed to defer discussions about the subpoena for deposition until after the dispute regarding the document subpoena have been resolved.

as a college undergraduate.

Ms. Boylan moved to quash the first four nonparty subpoenas to ESD, the Executive Chamber, Mr. Zemsky, and Ms. Fine (*Trooper 1* ECF 86-87; *Boylan* ECF 16-17), which Mr. Cuomo opposed (*Trooper 1* ECF 99; *Boylan* ECF 21). The briefing was completed on August 9, 2023, when Ms. Boylan filed a reply (*Trooper 1* ECF 112; *Boylan* ECF 25).² On August 15, 2023, Ms. Boylan also requested that the Court direct Mr. Cuomo not to enforce the subpoena issued to Ms. Biaggi, along with the three subpoenas issued to “Lindsey for New York,” Mr. Leebron, and Verizon, until the Court rules on Ms. Boylan’s motions to quash (*Trooper 1* ECF 116). Even *after* Ms. Boylan made this request, and before the Court has issued a ruling, Mr. Cuomo served another subpoena on Ms. Boylan’s former intern.

Following the briefing on Mr. Cuomo’s subpoenas, Defendant Melissa DeRosa served a document subpoena on Ms. Boylan (“DeRosa Subpoena”), bringing the total subpoenas directed or related to Ms. Boylan to 12. Ms. Boylan has requested that Ms. DeRosa refrain from seeking enforcement of her subpoena until after the Court rules on Mr. Cuomo’s document subpoena directed to Ms. Boylan, as Ms. Boylan believes both subpoenas have overlapping requests. Ms. DeRosa and Defendant Richard Azzopardi also served a subpoena on Ms. Boylan’s former intern at or around the same time as Mr. Cuomo—the thirteenth subpoena directed or related to Ms. Boylan.

Status of Discovery of Nonparties Virginia Limmiatis and Alyssa McGrath

- Virginia Limmiatis provided sworn testimony to the New York State Attorney General’s Office regarding her allegations of sexual harassment against then-Governor Cuomo on June 9, 2021. Her testimony is publicly available.
- Alyssa McGrath provided sworn testimony to the New York State Attorney General’s Office regarding her allegations of sexual harassment against then-Governor Cuomo on June 2, 2021. Her testimony is publicly available.
- Counsel for Defendant Andrew Cuomo served document and deposition subpoenas on Ms. Limmiatis and Ms. McGrath, dated April 3, 2023.
- Ms. Limmiatis and Ms. McGrath served responses and objections to the subpoenas on May 3, 2023.
- Ms. Limmiatis and Ms. McGrath produced responsive documents on May 15, 2023, and on August 1, 2023.
- Disputes regarding further document discovery and depositions of Ms. Limmiatis and Ms. McGrath persist, and counsel for the parties have had multiple telephone conferences and email exchanges.
- On September 8, 2023, counsel for Ms. Limmiatis and Ms. McGrath filed on ECF a pre-motion letter (ECF No. 149) seeking a briefing schedule on their forthcoming motion to quash the subpoenas or in the alternative for a protective order.

² Ms. Boylan also requested that certain exhibits remain under seal that were filed with Mr. Cuomo’s opposition to Ms. Boylan’s motions to quash, which includes Ms. Boylan’s private text messages, portions of Ana Liss-Jackson’s deposition transcript reflecting private text messages with Ms. Boylan, and portions of Mr. Cuomo’s brief filed on July 19, 2023 reflecting the same (*Trooper 1* ECF 111; *Boylan* ECF 24). Defendants Mr. Cuomo, Ms. DeRosa, and Richard Azzopardi opposed this request (*Trooper 1* ECF 118, 120; *Boylan* ECF 27).

- On September 12, 2023, counsel for Defendant Melissa DeRosa and Richard Azzopardi contacted counsel for Ms. Limmiatis and Ms. McGrath asking counsel to accept service of additional subpoenas for documents and depositions. Those subpoenas were served on September 20, 2023.

Respectfully submitted,

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